

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1523 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BUDHABHAI MAGANBHAI BHANGI

Versus

N M PATEL

Appearance:

1. Special Civil Application No. 1523 of 1991
MR CB DASTOOR for Petitioner No. 1
MR JITENDRA M PATEL for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/03/2003

ORAL JUDGEMENT

Heard learned advocate Mr. CB Dastoor appearing for the petitioner and learned advocate Mr. JM Patel, appearing for the respondent.

2. The dispute in this petition is in a narrow

compass as pursuant to the interim order passed by this Court on 24th April 1991 the petitioner was reinstated in service on 24th April 1991 and thereafter he was in service till 1996. The order of termination which was passed in 1996 was challenged before the Labour Court. The Labour Court decided the matter in favour of the petitioner against which a Special Civil Application No. 3138 of 2001 was filed by respondent, which is pending. However, the said period is not relevant for the purpose of the present petition.

3. The present petition now survives only in respect of the claim for salary for the period of February and March 1990 and also for the period of July-August 1990 and upto 30th September 1990, during which period the petitioner was sick and despite there being credit balance of leave the same was not sanctioned and no salary was paid. Further dispute which emerges from the petition is with regard to the salary for the period from 14th September 1990 to 24th April 1991 on which date the petitioner was reinstated in the service pursuant to the interim order passed by this Court. Mr. Dastoor has submitted that the petitioner should be given the salary for this period and that though the petitioner wanted to join the service the petitioner was not allowed to join the service and hence this Court should direct the respondent to make payment of the salary for the said period. Mr. JM Patel, ld. advocate for the respondent submits that the relief cannot straightway be granted as it requires investigation of facts as to whether there was any leave to the credit of the petitioner and it is further to be seen as to whether he wanted to resume the duties earlier. It is the stand of the respondent right from the beginning that the petitioner himself has not reported for his duties, whereas the respondent was willing to allow the petitioner to resume work. Even the statement made by the respondent before this Court at the time of passing the interim order was accepted and the petitioner was allowed to resume his duties. Hence, the petitioner cannot be granted the benefit without ascertaining the facts.

4. Having heard to the learned advocates appearing for the respective parties, I am of the view that if the petitioner had any leave to his credit, in that case he is certainly entitled to salary for the said period. Even otherwise, it requires factual investigation and hence the respondent Panchayat is directed to look into its record and ultimately if it is found that the petitioner is having sufficient leave to his credit, the respondent authorities will pay the salary for the said

period. Similarly, the respondents would also look into the record and verify as to whether the petitioner was ready and willing to join the duty from 14th September onwards. In this regard, the respondent should take into consideration the representation made by the petitioner on 9-10-1990 as well as the letter dated 22-2-1991 written by the Gujarat Nagar Palika Employees' Union and thereafter take the decision in the matter. The respondent should take the decision in this regard within two months from the date of receipt of certified copy of this Judgment or from the date of receipt of the writ whichever is earlier.

5. Subject to the aforesaid directions, the petition is disposed of. Rule is made absolute to the above extent. No order as to costs. Direct service is permitted.

rmr. [K.A. Puj, J.]